

NO. 48991-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

V.

BRANDON FARMER,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Michael E Schwarts, Judge

STATEMENT OF ADDITIONAL GROUNDS

BRANDON L. FARMER

Appellant

Washington State Penitentiary

1313 N 13th Avenue

Walla Walla, WA 99362

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STATE OF WASHINGTON)	
)	No. 48991-1-II
Respondent,)	
)	STATEMENT OF ADDITIONAL
V.)	
)	GROUNDS FOR REVIEW
Brandon Farmer)	
)	
Appellant.)	
)	
)	

I, Brandon Farmer, have received and reviewed the opening brief prepared by my attorney. Summarized bellow are the additional grounds fro review that are not addressed in that brief. I understand the court will review this Statement Of Additional Grounds For Review when my appeal is considered on the merits.

Additional Ground 1

During the cross examination of states key witness Dusty Titus, the trial court curtailed the defense of exposeing and presenting to the jury the extent and enormity of the plea bargain Mr. Titus was able to recive in return for his testimony. The type of charge, the severity of it as opposed to a minor charge, it was yet another huge part of the benifit that he recived. This witnes being what the state based his case on I think the defense was allowed to show that he recived not only a benifit, but a huge

benefit. You will find it discussed on page 305-321 of the V.R.P.
also page 471-504.

There is a huge qualitative difference between a drug charge
and a sex charge involving a minor.

There is also a huge qualitative difference between AA treatment
and sex offender treatment.

The truth instead of misleading the jury would have effected the
outcome. This was another attempt to make the witness appear
to be a better person doing something because it was right.

Additional Ground 2

Exhibit #106, The firearm that witness Mr. Titus owned years
after the incident in question.

It was admitted as demonstrative evidence as a weapon that looks
like the murder weapon. There was no nexus between this weapon
and the defendant or the weapon and the murder. It was confusion
of the issue, and a potential to mislead the jury to admit exhibit
#106 as real evidence.

The definition of real evidence speaks for itself:

The object at issue in the case, "the actual murder weapon" or
defective crankshaft, as opposed to a mere example of a weapon
or crankshaft of the type said to have been used in the crime or
accident. It was misleading and confusing to the jury.

It was view 20 min. before the jury returned the verdict after
days of deliberation, I think that shows they considered it
in their decision.

Additional Ground 3

Alleged threats to kill.

The issue was raised a couple of times throughout the trial. Mr. Titus and the defendant was at a gas station when an incident was alleged to have happened and statements were alleged to have been made by the defendant about killing someone. The incident was excluded as prior bad acts evidence. In opening the state made references to the excluded prior bad act by insinuating that the defendant had said he wanted to kill someone. Mr. Titus was asked 4 different times and gave 4 different answers. Page 474-481, in the V.R.P. The state argues that me making a statement that I was looking to kill somebody is a misrepresentation of what Mr. Titus says during any of the 4 times he was questioned about this issue. The state misled the trial court and in return caused the trial court to admit evidence that misled the jury.

Additional Ground 4

Evidence of victims character only used to cause sympathy. The testimony of Barbara Williams, was not used for anything but to cause sympathy and anger the jury. Character evidence is not admissible. Trial counsel failed to object to this.

Additional Ground 5

Prosecutorial Misconduct

(1) The state after being warned on Page 776, of the V.R.P. just prior to the cross exam of the defendant that just because the defendant is testifying does not automatically open the door to everything that was said during the interview. On page 782, lines 19-24, he ask defendant about going to bars, picking up or trying to pick up girls, and sometimes picking up prostitutes.

on page 784, lines 4-15, he refers to defendants prior acts with prostitutes at bars, then uses it to force defendant to admit to lying. Ignoring the court the state brought out all the prior bad acts evidence the court had excluded, claiming that they were inconsistent statements made by the defendant. The trial court said during hearing for a new trial on page 940, lines 11-14, of V.R.P. despite the fact that it may have been impeachment it still was 404(B) evidence that was improperly introduced. The state responded that he was talking about this issue itself, not a prior bad act, it's this bad act. The record shows that to not be true at all.

(2) Page 518, lines 3-10, of V.R.P. The state knowingly encouraged and allowed false testimony about his California plea agreement. Also vouched for his credibility when asking him "The information you gave law enforcement, was it the truth?"

(3) The state again on page 546, lines 12-13, asked Mr. Titus, "Is what you told the jury today the truth?"

(4) Page 864, lines 17-24, The state continues to vouch for the credibility of Mr. Titus. Also gives personal opinion on the guilt of the defendant, "To the perpetrator you carry that secret to the grave and that's what Brandon Farmer would have done.

(5) Page 866, lines 4-9, the state continues to vouch for the credibility of Mr. Titus, by insinuating that he could have helped himself by lying or wearing a wire and discussing the case with the defendant, all without placing himself at the scene. Neither of which is supported by the evidence.

The state also during closing arguments on a few occasions tried insinuating to the jury that Mr. Titus told them the same thing that everyone else had.

That 23 witnesses including Mr. Titus told you the same story and that the only story that was different was the defendants That was rebuttal argument by Mr. Penner on pages 898,899,900 and 901.

Page 865, 866, 867, the state incorrectly argues that Mr. Titus's statement is consistent with all the other witnesses also that it's consistent with itself, other witnesses, what he told his step father, the medical examiner.

Page 868, 869, 870, 871, 872.

The state argued that the defendants testimony was inconsistent with itself and everyone else.

The state on many occasions tried to say that the defendants statement that there were only one shot when everyone else heard two was not true because the defendant never said there was only one shot, in fact he said a every time that it was two shots. " Titus stumbled and the gun went off, then Mr. Titus then fired the gun again, and jumped into the truck as I was pulling out of the alley way."

U.S. V. Young, 470 U.S. 1, 18-19 (1985) (" The prosecutor vouching for the credibility of witnesses... carries with it the imprimature of Government and may induce the jury to trust the Governments judgement rather than its own view of the evidence.

U.S. V. Martinez-Medina, 279 F.3d 105, 119 (1st Cir. 2002)
(Prosecutors comment that Governments witness would have concocted more damaging stories if they were lying to curry favor with government was improper. U.S. V. Conrad, 320 F. 3d 851, 855-56 (8th Cir. 2003) (Conviction reversed because prosecutors improper remarks during trial had cumulative effect that substantially impaired the defendants right to a fair trial; the evidence against the defendant was not overwhelming and curative instructions were insufficient to protect defendant from substantial prejudice. Where the evidence against a criminal defendant is not clear-cut the prejudicial impact of any prosecutorial misconduct is magnified).

(6) Page 868, of V.R.P. States Closing Argument:

The state argues things not in evidence/ inserts herself as a witness, talking about a long roadtrip, call of nature, "you know exactly what Im talking about".

Improper vouching occurs when the prosecutor suggest that the testimony of government witnesses is supported by information outside that presented to the jury. United States V. Younger, 398 F.3d 1179, 1190 (9th Cir. 2005).

Additional Ground 6

Abuse Of Discretion / Judicial Misconduct.

Page 503 lines 16-19, of the V.R.P. The trial court when giving reason for excluding details of the plea agreement Mr. Titus received in return for his testimony, (1) He walks away from prison on sex charges involving a minor. (2) He walks away from sex offender treatment.

(3) He walks away from being prosecuted for murder or any involvement in it. As opposed to he walks away from some trouble and treatment. The jury not knowing the whole picture dose not let them see the huge gain he recived. theres a huge diffrence between "maby a drug charge and some treatment for it" or a sex charge on a minor and treatement, which he cant and wont comply with". When decideing this issue the trial court said " this is a critical witness, in fact the states most critical witness, due to the lack of any physical evidence, therefore his credibility is at the heart of the states case". Therefore I dont find that sex offender is so qualitatively diffrent that it would demonstrate any additional bias or interest on behalf of the witness Mr. Titus.

The evidence rules exclude evidence when its probative value is outweighed by other factors such as unfair prejudice, confusion of the issue, or potential to mislead the jury. (But when a rule that is intended to be of this type instead strays into evaluating the strength of the states case, it does not rationally serve the end that it was designed to promote. ie; to focus on the central issues,) " Why Mr. Titus is testifying for the state and what he is reciveing in return".

Additional Ground 7

Page 154, of V.R.P. Also Page 152.

Pg 152, the witness talks twice about the blood and brain matter on the victim, evidence was presented and supports that the victim was shot through the neck, nowhere neat the brain. these comments were verry inflammatory and flagrant.

Pg. 154, the comment "to find a woman executed", is also ill-intentioned.

Additional Ground 8

Same or similar offense.

Pages 724-728 of V.R.P.

On page 725, counsel points out that there was testimony of basically the theft of a purse.

So I would beg to differ that there wasnt an element somewhere or facts similar to this case.

Alos the closeness in time.

Conclusion

This is a summarized list of the grounds above.

- (1) Curtailed cross examination of Dusty Titus.
- (2) The lack of sufficient nexus between Exhibit 106, and the crime or the defendant/ The misleading use of it.
- (3) Alleged threats to kill, previously excluded as evidence.
- (4) Inadmissible charcter evidence of victim.
- (5) Prosecutrial misconduct through out entire trial.
- (6) Abuse of discretion / Judicial misconduct.
- (7) Inflammatory, flagrant comments intended to anger jury.
- (8) Prior conviction same as or similar.

Date:

11/10/2016

Brandon Farmer

Brandon Farmer

NIELSEN, BROMAN & KOCH, PLLC

November 17, 2016 - 2:19 PM

Transmittal Letter

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Case Name: Brandon Farmer

Court of Appeals Case Number: 48991-1

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☒ Other: Statement of Additional Grounds

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No Comments were entered.

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